

LEMON GROVE CITY COUNCIL AGENDA ITEM SUMMARY

Item No. 1.E

Meeting Date: November 20, 2018

Submitted to: Honorable Mayor and Members of the City Council

Department: City Manager's Office

Staff Contact: Shelley Chapel, City Clerk

Schapel@lemongrove.ca.gov

Item Title: Update the City of Lemon Grove "Working with Public Records Request" Policy

Recommended Action: Rescind Resolution No. 2608, and Adopt Resolution Approving the updated City of Lemon Grove "Working with Public Records Request" Policy.

Summary:

March 21, 2006, the City Council adopted a Public Records Request Policy that works in conjunction with the State of California Public Records Act (The Act). The Act enacted in 1968 is a key part of the philosophy that government in the State must be open and accessible to all.

The people have the right of access to information concerning the conduct of the people's business, and, therefore the meetings of the public bodies and the writings of public officials and agencies shall be open to public scrutiny. Cal. Const. Article 1, Section 3 (b).

In enacting this chapter, the Legislature, mindful of the right of individuals privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Cal Government Code Section 6250.

The Act, provides that public records shall be open for inspection during regular office hours of the agency and that agency has the responsibility to provide copies of "identifiable public records." When a copy of a record is requested, the agency shall determine within ten (10) days whether to comply with the request, and shall promptly inform the requestor of its decision and the reasons therefor.

If records are not readily available the agency has an initial ten (10)-day period to make a determination which may be extended for up to fourteen (14) days. If immediate

disclosure is not possible, the agency must provide the records within a reasonable period of time, along with an estimate of that date that the records will be available. The City is not required to actually produce the disclosable records within the 10-24 days, they are produced within the reasonable amount of time, and “reasonable” is often tied to the complexity of the effort to gather the records, withholding and/or redacting etc. If a request is denied, it must be denied in writing.

Special circumstances may provide discretionary exemptions which may utilize a basis for withholding records from disclosure. These exemptions must be provided to the requestor at the time denial is presented or reasons the records or information were withheld.

Discussion:

The City of Lemon Grove has a strong commitment to efficient and accurate responses to public records requests. The average response time to a public records request is 6-10 days. The annual average of public records requests received within the City is 250.

The update of this policy is to reflect any changes in the law, fees and/or procedural changes. It is the policy of the City to recover the cost of producing records to the extent allowed by law in response to Public Records Requests.

The City of Lemon Grove is dedicated to providing more documents on the City website to create greater transparency through which the public can access documents on their own time. This is an ongoing effort and considered a priority for the City Clerk when time allows.

Environmental Review:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Fiscal Impact: None.

Public Notification: None.

Attachments:

Attachment A – Resolution rescinding Resolution No. 2608, and adopting the updated City of Lemon Grove "Working with Public Records Request" Policy.

Attachment B – Redline Policy adopted March 21, 2006

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE,
CALIFORNIA, ADOPTING THE “WORKING WITH PUBLIC RECORDS
REQUEST” POLICY AND RESCINDING RESOLUTION NO. 2608**

WHEREAS, March 21, 2006, the City Council of the City of Lemon Grove approved the “Working with Public Records Request” policy.

WHEREAS, California Public Records Act (the Act) was enacted in 1968, to: (1) safeguard the accountability of government to the public; (2) promote maximum disclosure of the conduct of governmental operations; and (3) explicitly acknowledge the principle that secrecy is antithetical to a democratic system of “government of the people, by the people, and for the people.”

WHEREAS, the Act expressly provides that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”

WHEREAS, responding to Public Records Requests promptly and with quality are the key goals of the “Working with Public Records Request” Policy; and,

WHEREAS, the purpose of the “Working with Public Records Request” Policy is to outline the legal requirements for a request, identify the time requirements for the request, provide guidelines for processing public records requests, assist in determining when a record is exempt from public disclosure, the process the City will use to provide the service and describe what costs may be incurred by the requestor; and,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California, hereby approves the “Working with Public Records Request” Policy and rescinds Resolution No. 2608.

PASSED AND ADOPTED on _____, 2018, the City Council of the City of Lemon Grove, California, adopted Resolution No. _____, passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

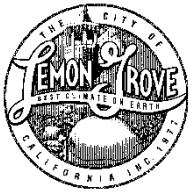
Raquel Vasquez, Mayor

Attest:

Shelley Chapel, MMC, City Clerk

Approved as to Form:

James Lough, City Attorney



REDLINE VERSION

City of Lemon Grove

Working with Public Records Request Policy

- California Government Code, Section 6250 - *In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.*
- California Government Code, Section 6251- *This chapter shall be known and may be cited as the California Public Records Act.*
- California Government Code, Section 6253 (a) - *Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.*

The Purpose:

The purpose of the Policy is to assure that a Public Records Request is responded to promptly and with quality **customer service**. ~~In responding to public requests for records, the City not only relies on the California Public Records Act, but also a strong commitment to efficient and accurate service.~~

It is the policy of the City to comply with the California Public Records Act **and the Government Code, by providing a balance of public interests in transparency, privacy, and effective government.** ~~and will provide the following assistance to members of the public so they may make an effective request by:~~

- ~~• Helping the members of the public to identify records and information that are responsive to the request,~~
- ~~• Describing the information technology and physical location in which the records exist.~~
- ~~• Providing suggestions for overcoming any practical basis for denying access to the records or information sought.~~

Determination of Disclosure:

If the determination is exemption a response explaining that exemption will be provided to the requestor.

Public records that are exempt from disclosure need not be available for review or reproduced.

~~The following are excerpts from California Government Code 6254 regarding exempt records.~~

Public records that are exempt from disclosure will not be produced which includes but is not limited to:

- ❖ Preliminary drafts, notes or interdepartmental or intra-agency memoranda which are not retained in the ordinary course of business. Provided that the public interest in withholding such record clearly outweighs the public interest in disclosure.
- ❖ Records pertaining to litigation to which the City is named.
- ❖ Files that contain personnel or medical records
- ❖ Records related to applications filed with any state agency responsible for the regulation or supervision of securities or financial institutions.
- ❖ Geological or geophysical data relating to utilities.
- ❖ Certain police records – these records are requested directly from the San Diego County Sheriff's Office.
- ❖ Test questions, scoring keys and other examination data used in employee hiring.
- ❖ The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.
- ❖ Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- ❖ Library circulation records.
- ❖ Attorney-Client memos or emails are confidential, even if the City is the client.
- ❖ Trade Secrets or Proprietary information, plans, or specifications submitted to the City by licensed design professionals, such as architects, engineers etc.
- ❖ Other unique exemptions contained in The Act are listed in Government Code 6254 and further defined through applicable case law.

The following are not public records and are exempt from disclosure:

- ❖ City initiatives, referendum and recall petitions
- ❖ Computer software developed by a City department, such as a computer mapping systems, computer programs, and computer graphics systems.
- ❖ Archaeological Sites and Official Building Plans
- ❖ Campaign Nomination Papers
- ❖ Electronic copies provided that may compromise the security or integrity of the original record or any proprietary software in which it is maintained.

Refer to ~~this~~ Government Code Section 6254 and applicable case law for the complete list of exemptions.

The City is not required to create a record when a request is made. For example a requestor may ask for a list of the address of all City Businesses. If a list does not exist staff is not required to create a list. However, if there are records in the City's possession that contain the requested information (such as a map that marks each location), the record must be provided.

A request for record is not a question or series of questions posed to local agency officials or employees. The requestor must make an attempt to identify specific documents that would provide a response to questions. The Act creates no duty to answer written or oral questions submitted by members of the public. A staff member may direct a member of the public to the City website if the response or responding document is easily available.

Time Requirements for Response to a Request:

The Public Records Act allows for the time it may take to determine whether a responding record is available and if said record should be disclosed. ~~Department Directors or their designee must determine whether a record should be disclosed and respond to the requestor within ten calendar days after the request has been received.~~ The requestor will receive written notice from staff notifying them of the status of the request. In addition, the notice shall state the estimated date and time when the records will be made available.

Request for Extension of Time

In unusual circumstances, the ten (10) day time limit may be extended by written notice by the City Clerk or his or her designee to the person making the request, explaining the reasons for the extension and the date of the determination of disclosure.

No notice shall specify a date that would result in an extension for more than fourteen (14) days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- 1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

If the request is voluminous, or overly vague the agency has the option to ask the requestor to narrow the request. The Agency may also ask the requestor to consent to a later responsive deadline, and/or consent to providing responsive records on a "rolling basis" (as the records are located/redacted/prepared) rather than one complete package. The agency is not required to perform a "needle in the haystack" search to locate records nor is it required to undergo a search that will produce a "huge volume" of material in response to a request. The burden on the agency must be substantial enough to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

Procedure:

City staff will provide the requestor with a receipt of request in writing. The receipt will acknowledge receipt of the email and of the ten (10) day notice.

Requests will be accepted during the days and hours that the City Hall is regularly open for business. If the email was received by email or otherwise after business hours or on a weekend or holiday, the next business day may be considered the first date of receipt. If the tenth (10) day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.

Records Duplication Costs:

It is the policy of the City to recover the cost of reproducing records to the extent allowed by State law. The City is allowed to recover only the direct and actual cost of duplication. ~~The “Fees for Public Records Act Duplication” provides the guideline in cost recovery.~~

Fees shall be in accordance with the current fee schedule adopted with the current City Budget.

The only exception is for Fair Political Practices Commission (FPPC) forms/filings which include Forms 510, 460, 470, 700, 802 etc. and are required to be provided as soon as possible, and in no event later than the second business day following receipt of the request. The regulated charge is \$.10 per page. In addition, an agency may charge a \$5.00 retrieval fee for copies of Campaign Statements (Forms 460/470) that are five (5) years or older. (Government Code 81000 et seq)

As a courtesy per the Act, the City may provide 20 free pages in the following cases:

~~The City may provide up to twenty free copies in the following cases:~~

- Any governmental agency or any public officer in his or her official capacity.
- Any person engaged in the performance of work at the City’s request where such copies of records are required to perform work.
- Bona fide students or teachers engaged in research projects
- Most of the City’s promotional materials.

Duplication of Non-Paper Records:

The format in which a record will be produced is the format stored: e.g. paper, electronic, etc. Under The Act the City is not required to create a record, therefore, if a document is stored and available in paper format it will not be scanned and emailed to the requestor.

The exception would be if the information is public and within a proprietary software a document could be printed and the requestor would pay a copy fee.

~~If the City receives a request, which constitutes an identifiable public record and not exempt from disclosure that is in an electronic format shall make that information available in an electronic format. The City is not required to reconstruct a record in an electronic format if the City no longer has the record available in an electronic format.~~

~~If the request is for records in other than electronic format, and the information also is in electronic format, the City may inform the requester that the information is available in electronic format. The City is not allowed to make record/information available only in an electronic format.~~

Requestor Reviewing the Records:

When reviewing records in volume the requestor will be placed in a conference room to review with a staff member. The requestor will be the only person allowed in to review the documents at a time.

The use of Cell Phones, Cameras, Laptop Computers, Ipad or other similar devices are prohibited when requestor is inspecting architectural or engineer plans with copyright protection.

Processing the Public Record Request:

For further assistance in ~~proceession~~ processing the request, follow the steps using the “Public Records Checklist.”

FEES FOR PUBLIC RECORDS ACT DUPLICATION

PHOTOCOPIES (Govt. Code Section 6253(b)):

8 1/2 x 11 Paper

Number of Pages _____ X \$0.10/per page \$ _____

Color Copies _____ x \$1.00/per page \$ _____

OVERSIZE COPIES:

8 1/2 x 14 Paper

Number of Pages _____ X \$0.25/per page \$ _____

11 x 17 Paper

Number of Pages _____ X \$0.50/per page \$ _____

AUDIO TAPES:

Number of Tapes _____ X \$3.00 each \$ _____

ELECTRONIC RECORDS :

Number of CDs _____ X \$3.00 each \$ _____

CAMPAIGN STATEMENTS (Govt. Code Section 81009):

Number of Pages _____ X .10 cents each \$ _____

TOTAL: \$ _____

PUBLIC RECORDS ACT CHECKLIST

- ☐ Date stamp the request **on the date received.**
- ☐ Determine the initial due date. Count ten (10) calendar days beginning with the day received as day one.
Exception: Form 700 – Statement of Economic Interests/ **FPPC Forms- Campaign Filings provide immediately or** commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received.
- ☒ **Forward Request to the City Clerk to log.**
- ☐ **City Clerk will identify** what is being requested.
 - ☐ Requesting access or copies?
 - ☐ Too broad? Too numerous? Too vague? **Call Email citizen requestor** to narrow request.
 - ☐ Are the records exempt to the Public Records Act?
 - ☐ ~~Do I need to~~ **Is a request for** a fourteen (14) day extension of the ten (10) day deadline **needed?**
 - ☐ Contact the City Attorney for additional information.
- ☐ Determine ~~what~~ department(s) ~~holds the~~ **of** record(s).
- ☐ ~~If more than one department is involved, immediately forward the original Public Records Act Request to the City Clerk's Office to coordinate document retrieval and/or duplication.~~
- ☐ Retrieve the records held by your **department office.**
- ☐ Determine the number of records.
- ☒ Determine cost of records, if requesting copies. (See **current Fee Schedule**) ~~Fees for Public Records Act Reproduction)~~
- ☒ Send out ~~standard Public Records Act form letter~~ **Standard Receipt of Request email** within first day or two of receiving request.
- ☒ Within ten days of receipt of request **a response should be sent responding to requestor that the City is in possession of records responding to the request or that there are no records responding. If an extension is required that can be discussed at this time. In addition if exemptions are being made they will be mentioned in this response if known at the time. unless the City Clerk's Office is coordinating the retrieval.**



When response is received from requestor, do one of the following:

- O If ~~citizen~~ requestor is requesting ~~to~~ only to review documents, schedule a time for the ~~citizen~~ requestor to come in to review; (If Voluminous amount of records to review; schedule a conference room and staff member to remain in the room during review.)
- O Arrange for copying. ~~Call citizen~~ Email requestor when documents are copied and available for pickup, or mail if requested and paid for.
- O If request if voluminous a deposit may be requested prior to making copies.
- O Save all responding documents, correspondence, and emails to the PRA Folder under the requestor's name. Retention of these records will be according to the City Records Retention Policy.